

GALLAND, KHARASCH, GREENBERG, FELLMAN & SWIRSKY, P.C.

ATTORNEYS AT LAW

CANAL SQUARE 1054 THIRTY-FIRST STREET, NW WASHINGTON, DC 20007-4499

TELEPHONE: 202/342-5200 FACSIMILE: 202/342-5219

RICHARD BAR  
STEVEN JOHN FELLMAN  
EDWARD D. GREENBERG  
MARTIN JACOBS  
WILLIAM F. KREBS  
DAVID K. MONROE  
STUART M. SCHABES  
DAVID P. STREET  
KEITH G. SWIRSKY

MICHAEL P. COYLE  
V. FOSTER  
CYNTHIA J. HURWITZ  
TROY A. ROLF

ROBERT N. KHARASCH  
REX E. REESE  
JOHN CRAIG WELLER

\*NOT ADMITTED IN DC \*NOT ADMITTED IN MD \*OF COUNSEL

OTHER OFFICES LOCATED IN  
BALTIMORE, MD AND MINNEAPOLIS, MN  
GEORGE F. GALLAND (1918-1985)

WRITER'S DIRECT E-MAIL ADDRESS  
egreenberg@gkglaw.com

WRITER'S DIRECT DIAL NUMBER  
(202) 342-5277

August 20, 2002

**VIA FACSIMILE and MAIL**

Mr. Vernon Williams, Secretary  
Office the Secretary  
Surface Transportation Board  
Mercury Building, Room 700  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings

AUG 26 2002

Part of  
Public Record

**RE: Finance Docket 34192 - Hi-Tech Trans, LLC - - Petition for  
Declaratory Order - - Hudson County, NJ**

Dear Mr. Williams:

We are special counsel to the New Jersey Department of Environmental Protection ("NJDEP"), having entered our appearance on July 18, 2002 in place of the firm of Kirkpatrick & Lockhart, LLP.

We are in receipt of correspondence from Mr. John F. McHugh, counsel for Hi-Tech Trans, LLC, dated August 15, 2002, in which he has forwarded a copy of certain court pleadings he filed on behalf of his client in the United States District Court for the District of New Jersey on August 7, 2002. We are also in receipt of a letter to the Board from Mr. Benjamin Clarke, counsel for Essex County Utilities Authority and Hudson County Improvement Authority, dated August 16, 2002, which responds to Mr. McHugh's letter of the previous day.



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As this correspondence may have caused some confusion, the purpose of this letter is to advise the Board that NJDEP believes that the Board's ability to decide the matters raised in Hi-Tech's Petition for Declaratory Relief is not affected by the recent action initiated by Hi-Tech in the court and that the Board should issue a decision in this matter. NJDEP's position on the merits of the Hi-Tech petition is of course set forth in the Reply it filed, on June 6, 2002, to Hi-Tech's Amended Petition for Declaratory Relief, namely that the Board should dismiss the petition because: of its lack of jurisdiction over the State of New Jersey due to the 11<sup>th</sup> Amendment; Hi-Tech is not a railroad and does not provide rail transportation within the meaning of 49 U.S.C. § 10501(b); and the State of New Jersey solid waste management statutes and regulations are not otherwise subject to challenge on the various grounds argued by Hi-Tech. Since the deficiencies of the petition that the State has pointed out in its reply are all straightforward matters of law, there is nothing to prevent the Board from acting on the State's request for dismissal.

Very truly yours,



Edward D. Greenberg

EDG/gmr

cc: See Attached Service List

cc: Jonathon M. Broder  
Consolidated Rail Corporation  
2001 Market Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19103

Nathan R. Feeno  
N.Y. Susquehanna and Western  
Railway Corporation  
1 Railroad Avenue  
Cooperstown, NY 13326

Victoria A. Flynn  
Decotiis, Fitzpatrick, Cluck & Cole, LLP  
500 Frank W. Burr Boulevard  
Teaneck, NJ 07666

John F. McHugh  
McHugh & Barnes P.C.  
6 Water Street, Suite 401  
New York, NY 10004

Paul Samuel Smith  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Room 4102 C-30  
Washington, D.C. 20590

William M. Tuttle  
Canadian Pacific Railway  
P.O. Box 530 (55440)  
501 Marquette Avenue South  
Suite 1700  
Minneapolis MN 55402

Carolyn Wolski  
Leonard Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402